



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.1372 of 2014 (PD)

&

M.P.(MD)No.1 of 2014

Bhoothanatha Pillai

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Manickavasagam Pillai, S/o.Nagaru Pillai

2.C.T.Raji

.. Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 07.04.2014, passed in I.A.No.238 of 2012 in O.S.No.209 of 2012 on the file of the Principal Subordinate Court, Nagercoil.

For Petitioner : Mr.D.Saravanan

For Respondents : Mr.M.P.Senthil

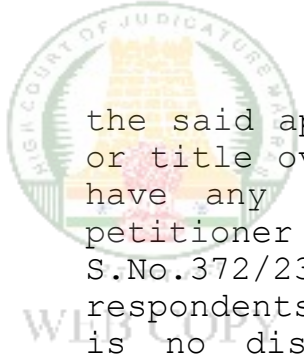
ORDER

This Civil Revision Petition has been filed to set aside the order dated 07.04.2014, passed in I.A.No.238 of 2012 in O.S.No.209 of 2012 on the file of the Principal Subordinate Court, Nagercoil.

2. Facts of the case:-

(i) The petitioner is the plaintiff and the respondents are the defendants in O.S.No.209 of 2012 on the file of the Principal Subordinate Court, Nagercoil. The petitioner filed the suit for declaration of title and possession of the plaint schedule property and for permanent injunction. According to the petitioner, the suit schedule properties are ancestral properties and no title deeds are available individually in the petitioner's mother's name. The petitioner is the only son of his mother. After the death of his mother, the petitioner inherited the plaint schedule property and got Patta No.1026 for the suit property. Based on the title, the possession and enjoyment of the property, he sold 14.070 cents of land to one Mahadevan. The plaint schedule property is bounded by compound walls on all sides and lying as a single plot. The petitioner is in enjoyment of the property for years together. The respondents taking advantage of the petitioner's absence in the suit property, trespassed into the suit property and damaged the cattle shed and tried to alter the physical features. Hence, he filed I.A.No.238 of 2012 for appointment of Advocate Commissioner.

(ii) The respondents filed counter affidavit and opposed



the said application and submitted that the petitioner has no right or title over the property in S.No.372/23. His mother also did not have any right or title over the suit property. Neither the petitioner nor his mother is in possession of the property in S.No.372/23. Admittedly, it belongs to the respondents and the respondents are in possession and enjoyment of the property. There is no dispute with regard to the extent and identity of the property. The petitioner is trying to collect evidence to prove his case through Advocate Commissioner.

(iii) The learned Principal Subordinate Judge, Nagercoil, considering the averments mentioned in the affidavit and the counter affidavit and considering the materials available on record and also the judgments relied on by the learned counsel for the respondents, dismissed the application on the ground that there is no dispute with regard to the identity, area and measurement of the suit property and the only question is to be decided whether the petitioner is having any right in S.No.372/23.

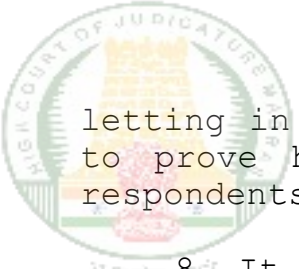
3. Against the said order of dismissal dated 07.04.2014, the present Civil Revision Petition is filed.

4. The learned counsel for the petitioner submitted that the respondents have trespassed into the suit property and damaged the cattle shed. The petitioner has sought for an appointment of Advocate Commissioner to note down the physical features in order to assist the Court to decide the issue in the suit.

5. Per contra, the learned counsel for the respondents submitted that there is no dispute with regard to identity or extent of the suit property. The petitioner has no title or interest over the property in S.No.372/23 and the petitioner is not in possession and enjoyment of the same. He has no title to S.No.372/23 and has no right to sell the same. It absolutely belongs to the respondents and the respondents are in possession and enjoyment of the same. The petitioner is trying to collect evidence to prove his case through the Advocate Commissioner. The learned Principal Subordinate Judge has given valid reason for dismissing the application and prayed for dismissal of the Civil Revision Petition.

6. I have heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

7. The petitioner has filed the suit for declaration and permanent injunction. The petitioner has contended that the suit property is ancestral property and he inherited the same from his mother. He sold a portion of the property to one Mahadevan and he is in possession and enjoyment of the suit property, measuring to an extent of 16 cents. The respondents are trespassing into the suit property and damaged the cattle shed. The respondents have denied the title of the petitioner over the suit property as well as the possession of the petitioner. The petitioner having filed the suit for declaration and permanent injunction has to prove his case by



letting in oral and documentary evidence. It is for the petitioner to prove his title and possession and also the trespass by the respondents.

8. It is seen from the materials on record, there is no dispute with regard to identity or extent of the suit property. It is well settled that Advocate Commissioner cannot be appointed, when there is no dispute with regard to the property in question. Further, it is well settled that Advocate Commissioner cannot be appointed to collect evidence on behalf of either of the parties to the suit. The learned Principal Subordinate Judge, Nagercoil, has considered all the materials on record and the judgments relied on by the learned counsel for the respondents, dismissed the application by giving cogent and valid reason. There is no irregularity or illegality in the order passed by the learned Principal Subordinate Judge, Nagercoil, warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge,
Nagercoil.

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